

FILED

SEP 20 2011

 CLERKUNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
SOUTHERN DIVISION

MICHAEL D. SMITH,

Plaintiff,

-vs-

MICHAEL J. ASTRUE, Commissioner,
Social Security Administration,

Defendant.

*
*
*
*
*
*
*
*
*
*
*

CIV. 10-4131

OPINION AND ORDER

The Plaintiff instituted this action seeking a review of the Commissioner's final decision denying him payment of disability insurance benefits and supplemental security income under the Social Security Act. This Court referred the case to United States Magistrate Judge John E. Simko for the purpose of issuing a Report and Recommendation. The Magistrate Judge has recommended that the Commissioner's decision be reversed and remanded for reconsideration and further administrative proceedings pursuant to sentence four of 42 U.S.C. § 405(g). Neither party filed objections to the Report and Recommendation. The Court has carefully reviewed the Magistrate Judge's Report and Recommendation and the record of the administrative proceedings. After having reviewed the record, the Court agrees with the Magistrate Judge's Report and Recommendation.

A sentence four remand is proper when the district court makes a substantive ruling regarding the correctness of the Commissioner's decision and remands the case in accordance with such ruling. *Buckner v. Apfel*, 213 F.3d 1006, 1010 (8th Cir. 2000). Remand with instructions to award benefits is appropriate "only if the record overwhelmingly supports such a finding." *Buckner* at 1011. In the

face of a finding of an improper denial of benefits, but the absence of overwhelming evidence to support a disability finding by the Court, out of deference to the ALJ the proper course is to remand for further administrative findings. *Id.*, *Cox v. Apfel*, 160 F.3d 1203, 1210 (8th Cir. 1998).

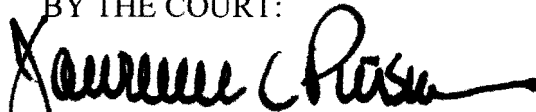
Reversal and remand is warranted in this case, not because the evidence is overwhelming, but because the record evidence should be clarified and properly evaluated. Therefore, a remand for further administrative proceedings is appropriate. Accordingly, it is hereby

ORDERED that:

1. The Magistrate Judge's Report and Recommendation (Doc. 19) is ADOPTED by the Court.
2. The Commissioner's decision is REVERSED under sentence four of 42 U.S.C. § 405(g) and the case is REMANDED to the Commissioner for further administrative proceedings as set forth above.

Dated this 19th day of September, 2011.

BY THE COURT:


Lawrence L. Piersol
United States District Judge

ATTEST:

JOSEPH HAAS, Clerk

By , Deputy